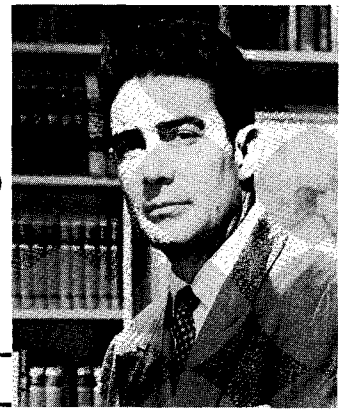


THE *Dan Smoot Report*



DAN SMOOT

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SUPREME COURT'S PRAYER DECISION—PART IV

The Supreme Court's New York School Prayer Case Decision on June 25, 1962, has had one wholesome effect: it has aroused members of this United States Congress more than anything else ever did.

Reaction In Congress

Below is a brief sampling of remarks made in Congress on June 26, 1962, the day after the Prayer Case Decision was handed down.

United States Representative Richard L. Roudebush (Republican, Indiana), called the Prayer Decision "appalling," saying:

"... the Supreme Court would place this nation on an equal plane with Soviet Russia where the godless and atheistic communist rulers permit no mention of a Supreme Being. . . .

"It is incomprehensible to me that a nation which has acknowledged and pledged its very existence to God could produce a judicial body that would decide it is unconstitutional for our children to . . . declare their belief in God. . . . the hour is indeed late for America, when we would deny our God, from whom all our blessings flow.

"This is not a question of separation of church and state; it is a question of oppression of religion in America."⁽¹⁾

United States Representative Henry C. Schadeberg (Republican, Wisconsin), said:

"If the name of God is not to be uttered in the public school classroom, then . . . we can look forward to the time when it will become unconstitutional to read or to teach the Declaration of Independence in our schools, because this historic document includes . . . references to God as the very Author of our rights.

"Destroy the recognition of God among our youth, and you destroy a respect for the very basis upon which our freedoms are founded. . . .

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"This is the beginning of . . . a bold attempt to destroy the spiritual foundation of our Nation, and thus our freedom. . . ." ⁽¹⁾

United States Representative Steven B. Derounian (Republican, New York) called the Supreme Court's Prayer Case Decision a "great job of constitutional nitpicking." Derounian put into the *Congressional Record* an editorial from the *Washington Evening Star*, which said:

"Jesus . . . said *Suffer little children to come unto me, and forbid them not*. Little children may not approach Him, however, through the public schools of New York. Six Justices of the Supreme Court have forbidden it. . . ." ⁽¹⁾

United States Representative Joe D. Waggoner, Jr. (Democrat, Louisiana) said:

"Not any time before in the short history of this nation has a more disgraceful or evil act been perpetrated . . . than yesterday's decision by the Supreme Court to ban Almighty God from the schools of the land. . . ."

"I am appalled, horrified, ashamed, . . . and . . . fearful." ⁽¹⁾

United States Representative Don L. Short (Republican, North Dakota), said:

"We have reached a strange point in our history when this nation of people, *endowed by their Creator* (as stated in the Declaration of Independence) should take such a long step toward prohibiting the reiteration of a belief in God. . . ." ⁽¹⁾

United States Representative Ben F. Jensen (Republican, Iowa) said:

"I had always thought we could safely assume that acknowledgment of a supreme deity was . . . a universal common ground in this blessed land.

"I am horrified that six supreme jurists now think such recognition has no place in the schools, where formative guidance is so important.

"This is deliberate annihilation of a historical and sacred custom. I pray for America and its honorable Court." ⁽¹⁾

United States Representative Horace R. Kornegay (Democrat, North Carolina) said:

"This decision . . . appears to foster and advance the cause of atheism. I am a staunch believer in the separation of church and State but not in the separation of God and government. The Constitution was conceived and written, and this Government was established and promoted, by men of great faith in the Supreme Creator, under whom we all serve, including, I trust, the members of the Court. . . ." ⁽¹⁾

United States Representative Frank J. Becker (Republican, New York) said:

"This is not the first tragic decision of this Court, but I would say it is the most tragic in the history of the United States. . . ." ⁽¹⁾

United States Representative Richard H. Poff (Republican, Virginia) called the Prayer Decision,

" . . . a complete departure from established practice and precedent in American jurisprudence. . . ." ⁽¹⁾

In the Senate, Sam J. Ervin (Democrat, North Carolina) said:

"The writer of this particular opinion — Justice Black . . . says the right of freedom of speech is absolute and is not subject to any limitation whatever. . . . But . . . a person cannot talk to God or about God while he is on public-school property." ⁽¹⁾

United States Representative John Bell Williams (Democrat, Mississippi) said:

"Surely no action ever taken by an agency of Government in America has been so destructive of the basic foundations of our society. The implications of this decision and the interpretations which it suggests, are more terrifying, even than the threats of another war. . . ."

"I . . . detect in this and other recent actions a deliberate and carefully planned conspiracy to substitute materialism for spiritual values, and thus to communize America. . . ." ⁽¹⁾

United States Representative Robert L. F. Sikes (Democrat, Florida) said:

"I find it difficult to choose the adjectives which properly describe this latest bid for infamy by the Nation's highest court. But, I must say that if the Supreme Court were openly in league with the cause of commu-

nism, they could scarcely advance it more than they are doing now.”⁽¹⁾

A Pro-Communist Court?

The remarks of Representative Roudsbush, comparing the implications of the Supreme Court's Prayer decision with the enforced atheism in communist countries; the remarks of Representative John Bell Williams, saying that the Court's decision reflects a plan to communize America; and Representative Sikes' remark that the Supreme Court is advancing the cause of communism — are interesting when placed against the background of hard facts which Senator James O. Eastland (Democrat, Mississippi) put in the *Congressional Record* on May 2, 1962.

Senator Eastland said:

“... nine men appointed for life, with no responsibility to the people in either their appointments or tenure... arrogate unto themselves the power to dictate to the sovereign states how they shall conduct their internal affairs, even to the point of... overturning the established constitutions and laws of the States...”

“The day is coming when such a usurpation of power on the part of nine such men must and will be repudiated.”⁽²⁾

To show what he meant by *nine such men*, Senator Eastland put in the *Congressional Record* a chart showing the stand taken by each Supreme Court Justice in 107 cases involving subversive activities from 1943 to 1961. Justice Byron R. White (Kennedy appointee, and newest judge on the Court) did not participate in any of the cases listed by Senator Eastland.

Here are the records of the other eight Justices presently on the Supreme Court, as shown in Senator Eastland's chart of their stand in 107 cases involving subversive activities:

Justice Hugo L. Black (appointed by Roosevelt in 1937) participated in 102 of the 107 decisions. Black supported the posi-

tion urged upon the Court by the communist party or its sympathizers in every one of those 102 cases.

Justice William O. Douglas (appointed by Roosevelt in 1939) participated in 100 of the 107 decisions. Douglas supported the communist position 97 times; held to the contrary 3 times.

Chief Justice Earl Warren (appointed by Eisenhower in 1953) participated in 65 of the 107 decisions. Warren supported the communist position 62 times; held to the contrary 3 times.

Justice William J. Brennan, Jr. (appointed by Eisenhower in 1956) participated in 51 of the 107 decisions. Brennan supported the communist position 49 times; held to the contrary 2 times.

Justice Felix Frankfurter (appointed by Roosevelt in 1939) participated in 103 of the 107 decisions. Frankfurter supported the communist position 69 times; held to the contrary 34 times.

Justice John M. Harlan (appointed by Eisenhower in 1955) participated in 65 of the 107 decisions. Harlan supported the communist position 30 times; held to the contrary 35 times.

Justice Potter Stewart (appointed by Eisenhower in 1958) participated in 20 of the 107 decisions. Stewart supported the communist position 6 times; held to the contrary 14 times.

Justice Tom C. Clark (appointed by Truman in 1949) participated in 82 of the 107 decisions. Clark supported the communist position 21 times; held to the contrary 61 times.

As Senator Eastland points out, the present Supreme Court Justices do not adjudicate cases on the basis of what the Constitution means. They adjudicate on the basis of their personal predilections.

In his concurring opinion in the School Prayer Case, for example, Justice Douglas referred to the Court's decision in the *Everson Case* of 1947. Douglas says he has changed his mind and now thinks the *Everson Case Decision* (which he agreed with at the time)

should be reversed. Douglas does not even infer that he has discovered any new information, or found any new insight, about the meaning of the Constitution: he has just changed his mind. His personal mood in 1962 is the opposite of what it was in 1947.

Obviously, the stand which a member of our present Supreme Court takes in any case reflects neither the meaning of the Constitution, nor the intent of a law, nor the judicial precedents of the Court itself: it reflects merely the *personal* reaction of the justice toward the persons or causes involved in the case before him. Consequently, when a Supreme Court Justice supports a communist position in any case, he does so, not because of constitutional provisions, but because the Justice personally favors that position.

Senator Eastland's chart shows that our Supreme Court Justices, in deciding cases involving subversive activities, *average* a favorable reaction toward the communist position 74 percent of the time.

Action In Congress

In his May 2, 1962, speech, Senator Eastland mentioned the need to stop the Supreme Court's usurpation of power. This theme — that the Court must be curbed — became a refrain in criticism of the Court following the June 25, 1962, Prayer Case Decision.

On June 26, 1962, Senator A. Willis Robertson (Democrat, Virginia) said:

"The Court would not prohibit the circulation of obscene literature among the youth of the country, but yet it would not allow them to join in the offering of a prayer when they go to school.... I was shocked; and I hope all Members of the Senate were shocked and that they will not hesitate... to join... in a resolution to say to the Court, *We will not stand for this any longer. You have gone as far in misinterpreting the Constitution and our form of government as we will stand for....*"⁽¹⁾

Senator Herman E. Talmadge (Democrat, Georgia) said:

"For some years now, the members of the Supreme Court have persisted in reading alien meanings into the Constitution of the United States. Through interpretations which cannot be sustained by either the language of the Constitution or the intent of the Framers, they have sought, in effect, to change our form of government.

"But never in the wildest of their excesses... have they gone as far as they did on yesterday when — in a gross distortion of the first amendment — six of the justices decreed that the voluntary saying of nondenominational prayers in public schools is unconstitutional.

"It was an outrageous edict which has numbed the conscience and shocked the highest sensibilities of the Nation. If it is not corrected, it will do incalculable damage to the fundamental faith in Almighty God which is the foundation upon which our civilization, our freedom, and our form of government rest....

"The first amendment is so clear that any fourth-grade student can understand it. It says simply that: *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.*

"Congress has made no such law.... And in the absence of such a law, the Supreme Court is without authority to act on the subject.

"In fact... a true interpretation of the spirit of the Constitution would hold that the Supreme Court, not the State of New York, has violated it.... because the effect of yesterday's ruling was to prohibit the free exercise of religion by the school children of the State of New York....

"[I] hope... this unconscionable edict will [arouse]... the American people to demand action by their elected representatives to put an end... to... judicial encroachments which are destroying freedom and constitutional government in this country...."⁽¹⁾

United States Representative Thomas G. Abernethy (Democrat, Mississippi) said:

"The decision of the Supreme Court... should once again demonstrate... that an unbridled Court [will]... destroy this country....

"Legislation is pending before the Congress to calm the power grab of these power-drunk men. We should lay aside all else until this job is attended to."⁽¹⁾

Within a week after the Prayer decision was handed down, 35 United States Representatives had proposed 36 different pieces of legislation to do something about the Supreme Court's decision; and 18 Senators were sponsoring similar legislation in the Senate.

The 35 Representatives and 18 Senators thus moved to action by the Supreme Court's Prayer decision represent all shades of political attitude in the Congress.

After the name of each Representative and Senator mentioned in the listings and discussions immediately following, there is a number — which is the percentage-rating the legislator earned in roll call votes tabulated in this *Report* during the first session of the present Congress in 1961. An 8 means that the legislator voted 8% of the time *for* constitutional principles, 92% of the time *against* constitutional principles. A 96 means that he voted 96% of the time *for* constitutional principles, 4% of the time *against* constitutional principles; and so on.

Note that the ratings of legislators now proposing to do something about the Supreme Court range from the 8 for Thomas F. Johnson, a liberal Maryland Democrat, to the 96 for Edgar W. Hiestand, a conservative California Republican and one of the best constitutionalists in the United States Congress.

Many legislators now sufficiently alarmed (or feeling sufficient pressure from constituents) to initiate action aimed at curbing the Supreme Court are men who have previously remained quiet about the Court's lawless behavior — or have actually supported the Court.

Within a week after the Supreme Court's Prayer Case decision, the following 33 United States Representatives had introduced 33 different House Joint Resolutions, each proposing a constitutional amendment to authorize prayer in public schools:

Thomas F. Johnson — 8, D, Md.
Morgan M. Moulder — 14, D, Mo.
George H. Fallon — 18, D, Md.
Chester E. Merrow — 22, R, N.H.
George Huddleston — 25, D, Ala.
Frank W. Boykin — 28, D, Ala.
Horace R. Kornegay — 28, D, N.C.
Roy A. Taylor — 28, D, N.C.
D. R. Matthews — 29, D, Fla.
Walter S. Baring — 29, D, Nev.
Robert L. F. Sikes — 37, D, Fla.
Paul A. Fino — 37, R, N.Y.
James G. Fulton — 41, R, Pa.
Hugh Q. Alexander — 47, D, N.C.
Basil L. Whitener — 48, D, N.C.
J. Irving Whalley — 56, R, Pa.
Thor C. Tollefson — 60, R, Wash.
William B. Widnall — 61, R, N.J.
Delbert L. Latta — 71, R, Ohio
L. Mendel Rivers — 71, D, S.C.
Jamie L. Whitten — 74, D, Miss.
William H. Harsha, Jr. — 74, R, Ohio
Carleton J. King — 75, R, N.Y.
Joel T. Broyhill — 75, R, Va.
Richard H. Poff — 75, R, Va.
Glenn Cunningham — 79, R, Nebr.
Joe D. Waggonner, Jr. — 80,⁽³⁾ D, La.
Frank J. Becker — 85, R, N.Y.
Richard L. Roudebush — 86, R, Ind.
John Bell Williams — 88, D, Miss.
Arthur Winstead — 88, D, Miss.
Henry C. Schadeberg — 93, R, Wisc.
Edgar W. Hiestand — 96, R, Calif.

In addition to the above, 3 other pieces of legislation, resulting from the Supreme Court's Prayer decision, were introduced in the House.

On June 28, 1962, Representative Howard H. Baker (60 — R, Tenn.) introduced HR

12345, to provide that all sessions of all courts of the United States be opened with prayer to Almighty God.

On June 29, 1962, Representative Katharine St. George (88 — R, N.Y.) introduced HJR 790, proposing a constitutional amendment providing that Congress, by two-thirds vote of both houses, can override decisions of the Supreme Court.

On July 2, 1962, Representative L. Mendel Rivers (71 — D, S.C., who is also among the 33 Representatives proposing constitutional amendments to authorize prayer in public schools) introduced HR 12389, making certain exceptions to the appellate jurisdiction of the Supreme Court and of the U.S. Courts of Appeal, and to the jurisdiction of federal district courts in actions relating to the public schools.

In the Senate:

On June 26, 1962, Senator John Stennis (60 — D, Miss.) introduced SJR 204, proposing a constitutional amendment to permit prayer in public schools.

On June 27, 1962, Senator J. Glenn Beall (33 — R, Md.) introduced SJR 205, proposing a constitutional amendment to permit voluntary participation of public school students in offering nonsectarian prayer in classrooms. This Resolution was co-sponsored by the following Senators:

Howard W. Cannon — 10, D, Nev.
Hiram L. Fong — 11, R, Hawaii
Robert C. Byrd — 19, D, W.Va.
Prescott Bush — 33, R, Conn.
Hugh Scott — 33, R, Pa.
Frank Carlson — 35, R, Kans.
Herman E. Talmadge — 43, D, Ga.
Karl E. Mundt — 62, R, S.D.
Henry C. Dworshak — 71, R, Ida.
John M. Butler — 74, R, Md.
Wallace F. Bennett — 76, R, Utah
John J. Williams — 76, R, Dela.

On June 27, 1962, Senator R. Vance Hartke (10 — D, Ind.) introduced SJR 356,

proposing a constitutional amendment authorizing prayer in public schools provided that no public official prescribes or recites the prayer, and provided that it does not interfere with the First Amendment's protection of the free exercise of religion.

On June 29, 1962, Senator James O. Eastland (61 — D, Miss.) introduced SJR 207, proposing a constitutional amendment authorizing prayer and Bible reading in public schools. This Resolution was co-sponsored by the following Senators:

Herman F. Talmadge — 43, D, Ga.
Olin D. Johnston — 43, D, S.C.
John L. McClellan — 76, D, Ark.

Proposed Amendments Are Wrong

Although some of the legislators proposing constitutional amendments to permit prayer in public schools are among the best men in Congress, such proposals are dangerous and unnecessary.

A constitutional amendment authorizing prayer in schools implies that the present Constitution outlaws prayer. That is not so.

Such an amendment would give the federal government *constitutional* authority to meddle in public school affairs. The federal government *does* meddle in school affairs, but such meddling is now unconstitutional and illegal. There is, therefore, a possibility that it can someday be stopped. If we should adopt a constitutional amendment to authorize prayer in public schools, we never would stop the drive toward nationalization of our school systems, because we would thus give the federal government a constitutional pretext of responsibility in the field of public education.

The constitutional amendment proposed by Representative Katharine St. George (HR 790) providing that Congress by a two-thirds vote can override decisions of the Supreme Court is unnecessary, because Congress, with-

out any constitutional change, can curb the Court by direct legislation which requires only a majority vote for enactment. Moreover, such an amendment would dangerously alter the delicate balance of power between the three co-ordinate branches of the federal government which the Founding Fathers so carefully provided in the Constitution.

The Correct Remedy

The correct remedy is suggested by HR 12389, introduced on July 2, 1962, by Representative L. Mendel Rivers of South Carolina — proposing an act of Congress to limit the appellate jurisdiction of the Supreme Court. But the Rivers Bill is far too limited in scope.

Article 3, Section 2, clause 2 of the Constitution says:

“... the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.”

This means that the Supreme Court has no authority to hear any case on appeal unless Congress has specifically granted such authority. This rule was first enunciated by the Supreme Court in 1796, in the case of *Wiscart versus Dauchy*.⁽⁴⁾

Chief Justice John Marshall reaffirmed the rule in 1810 in the case of *Durousseau versus United States*.⁽⁴⁾

The most emphatic statement that the appellate jurisdiction of the Supreme Court is totally dependent on Congress — that Congress can give or take away the Court's authority to hear cases — is in *United States versus Bitty*. In this case, decided in 1908, the Supreme Court held *that there is no right to appeal to the Supreme Court except as an act of Congress confers it*.⁽⁴⁾

The most dramatic demonstration of Congress's power over the Supreme Court is in

the *McCardle Case* of 1868. From page 614 of Senate Document No. 170:⁽⁴⁾

“The power of Congress to make exceptions to the court's appellate jurisdiction has thus become, in effect, a plenary power to bestow, withhold, and withdraw appellate jurisdiction, even to the point of its abolition. And this power extends to the withdrawal of appellate jurisdiction even in pending cases. In the notable case of *Ex parte McCardle*, a Mississippi newspaper editor who was being held in custody by the military authorities acting under the authority of the Reconstruction Acts filed a petition for a writ of *habeas corpus* in the circuit court for Southern Mississippi. He alleged unlawful restraint and challenged the validity [of] the Reconstruction statutes. The writ was issued, but after a hearing the prisoner was remanded to the custody of the military authorities. *McCardle* then appealed to the Supreme Court which... heard arguments on the merits of the case, and took it under advisement. Before a conference could be held, Congress, fearful of a test of the Reconstruction Acts, enacted a statute withdrawing appellate jurisdiction from the Court in certain *habeas corpus* proceedings. The Court then proceeded to dismiss the appeal for want of jurisdiction.”

In addition to *Wiscart versus Dauchy* in 1796; *Durousseau versus United States* in 1810; *Ex parte McCardle* in 1868; and *United States versus Bitty* in 1908, here are other cases in which the Supreme Court holds, or by its meaning proves, that the Court cannot legally hear a case on appeal and render a valid decision unless Congress has specifically granted the Court appellate jurisdiction to handle that kind of case:

Ex parte Yerger, in 1869; *Railroad Co. versus Grant* in 1878; *Kurtz versus Moffitt* in 1885; *Cross versus Burke* in 1892; *Missouri versus Missouri Pacific Railroad Company* in 1934; and *Stephan versus United States* in 1943.⁽⁴⁾

Congress has never granted the Court appellate jurisdiction in educational and religious matters.

So, Congress should simply pass a law saying that the Supreme Court does not have, shall not have, and never has had, appellate jurisdiction in any case affecting educational or religious matters. To make certain of eliminating damage already done by previous decisions in this field where the Court has no legal jurisdiction, the law should include a paragraph specifically declaring null and void all previous Court decisions affecting religious and educational matters.

Those Representatives and Senators who decry the lawless Court for trying to destroy our Constitution and communize America can save the Republic — and earn the deathless gratitude of all Americans who understand and respect our constitutional system — if they will introduce, and work relentlessly for, the right kind of effective legislation to stop the rampaging Court.

Congress has the constitutional authority; and the people are in a mood for action.

More On the Court

The January 30, 1961, and the February 6, 1961, issues of this *Report* ("Impeaching Earl Warren," Parts 1 and 2) are still in print. These 1961 *Reports* can be ordered in a set with the present series of four issues on the Supreme Court: \$1.00 for a package of all six *Reports*.

The two 1961 *Reports* present, among other things, briefs of communist cases handled by the Court, and a proposed remedy for the constitutional chaos which has been caused by the illegal Fourteenth Amendment.

FOOTNOTES

- (1) *Congressional Record*, June 26, 1962
- (2) *Congressional Record*, May 2, 1962, pp. 7026 ff.
- (3) Mr. Waggonner's 80% constitutionalist voting record reflects his votes on 5 roll-calls published in this *Report*, July 9, 1962. He was not in Congress in 1961.
- (4) Pages 614, 615 of *The Constitution Of The United States Of America: Analysis and Interpretation: Annotations of Cases Decided By The Supreme Court Of The United States To June 30, 1952*, prepared by the Legislative Reference Service of the Library of Congress, and published in 1953 by the Government Printing Office as Senate Document No. 170

WHO IS DAN SMOOT?

Dan Smoot was born in Missouri. Reared in Texas, he attended SMU in Dallas, taking BA and MA degrees from that university in 1938 and 1940.

In 1941, he joined the faculty at Harvard as a Teaching Fellow in English, doing graduate work for the degree of Doctor of Philosophy in the field of American Civilization.

In 1942, he took leave of absence from Harvard in order to join the FBI. At the close of the war, he stayed in the FBI, rather than return to Harvard.

He worked as an FBI Agent in all parts of the nation, handling all kinds of assignments. But for three and a half years, he worked exclusively on communist investigations in the industrial midwest. For two years following that, he was on FBI headquarters staff in Washington, as an Administrative Assistant to J. Edgar Hoover.

After nine and a half years in the FBI, Smoot resigned to help start the Facts Forum movement in Dallas. As the radio and television commentator for Facts Forum, Smoot, for almost four years spoke to a national audience giving both sides of great controversial issues.

In July, 1955, he resigned and started his own independent program, in order to give only one side — the side that uses fundamental American principles as a yardstick for measuring all important issues.

If you believe that Dan Smoot is providing effective tools for those who want to think and talk and write on the side of freedom, you can help immensely by subscribing, and encouraging others to subscribe, to *The Dan Smoot Report*.